

REMARKS

Claims 1-16 remain pending in this application for which applicant seeks reconsideration.

Art Rejection

Claims 1-16 now stand rejected under 35 U.S.C. § 103(a) as unpatentable over Yamanaka (USPGP 2001/0016834). Applicant traverses this rejection because Yamanaka would not have disclosed or taught the user contributing aspect set forth in independent claims 1, 5, 9, and 13.

The present system is directed to allowing the advertisement fees collected from the advertisers to be distributed to the content proprietors, while allowing the users to freely publish or browse the digital contents without having to concern themselves with the complicated process of obtaining rights to publish. That is, the present system allows the user to create a digital content and contribute the created digital content to the server independently of the proprietors. If the created digital content is a secondary work of an original content, the user registers the secondary work in the sever together with identification of the proprietor of the original content when uploading the secondary work to the server. The user and the proprietor are separate and independent of each other. When the secondary work contributed by the user is distributed upon request from another user, the server can identify the proprietor of the original content corresponding to the distributed secondary work according to the identification information registered in the server. Therefore, the present system allows proper allocation of the advertisement fees to the respective proprietors in proportion to the frequency of requests of the respective secondary works.

Yamanaka discloses a system that allows distribution of digital contents through a network with advertisements. In Yamanaka, the advertisement fees collected from advertisers are paid to proprietors of the digital contents in return for allowing distribution of the digital contents. In Yamanaka, the server stores the digital contents associated with the proprietors. The advertisement fees are allocated to the proprietors based on the digital contents being associated with the proprietors. Yamanaka does not disclose or teach paying the advertisement fees solely to the proprietors of the original works, while allowing the user to freely create secondary works from the original works.

In this respect, independent claims 1, 5, 9, and 13 each call for contributing a digital content from one of the users together with status information indicating that the contributed

digital content is subject to legal protection and identifying the proprietor of the digital content, which is created as a secondary work by the one user, who is different from the identified content proprietor. Accordingly, these claims call for allowing a user to submit a secondary work, which is a work created by another, with additional information added, from a user terminal. These claims further call for registering the contributed digital content in a second database together with the status information.

Applicant previously argued that Yamanaka would not have disclosed or taught submitting works of others by the users of the service who are not the creators or owners. In other words, applicant argued that Yamanaka simply would not have taught a system where users can legally contribute digital contents owned by others. The examiner contends that paragraphs 137 and 139 disclose submitting a creator's work by another, namely an agent of the creator or a person who obtains permission from the creator, thereby disclosing a system where the user can legally contribute content owned by others. Applicant disagrees with the examiner's assessment.

In Yamanaka, the agent or a person authorized by the creator to permit third parties to use the creator's digital content is treated as a holder 3a rather than a user 1a. Moreover, paragraph 139 of Yamanaka discloses that the holder 3a merely has the permission to distribute the creator's work. There is no mention in paragraphs 137 and 139 (or anywhere else) that the holders 3a or users 1a can add information to the creator's work by another and distribute as a secondary work. Yamanaka simply does not disclose or teach that the holder 3a or the user 1a can contribute a secondary work of another creator.

The examiner recognizes that Yamanaka does not disclose or teach the secondary work aspect of the claimed invention. In this respect, the examiner has taken Official Notice that providing a legal notice or creator's information to the work are well known. The issue germane to the patentability is not whether including the legal notice and such would have been known, but rather whether it would have been obvious for the user who has no affiliation with the creator to include such information and contribute. While it may have been known by the creator to include a legal notices or creator's information to his or her own work, there would not have been any motivation in Yamanaka for the user 1a or even the holder 3a to include such a notice or information to the work of another. Accordingly, applicant submits that Yamanaka would not have disclosed or taught the claimed invention.

Conclusion

Applicant submits that claims 1-16 patentably distinguish over the applied reference and are in condition for allowance. Should the examiner have any issues concerning this reply or any other outstanding issues remaining in this application, applicant urges the examiner to contact the undersigned to expedite prosecution.

Respectfully submitted,

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DATE

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